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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
Defendant.)
_____)

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Videotaped Federal Rule 30(b)(6) Deposition
of PETER B. KESSLER, Ph.D., taken at 755 Page
Mill Road, Palo Alto, California, commencing
at 9:39 a.m., Thursday, August 4, 2011, before
Leslie Rockwood, RPR, CSR No. 3462.

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<p>1 deposition, actually. Besides reviewing source code and</p> <p>2 meeting with your counsel yesterday, did you do anything</p> <p>3 else to prepare for your deposition today was the</p> <p>4 question.</p> <p>5 MS. AGRAWAL: You mean specifically with</p> <p>6 respect to the topics?</p> <p>7 MR. KAMBER: Yes. Okay. Fair enough.</p> <p>8 Q. With respect to the 30(b)(6) topics today,</p> <p>9 did you spend -- did you do anything else besides meeting</p> <p>10 with counsel and reviewing source code?</p> <p>11 A. No.</p> <p>12 MR. KAMBER: We've been going -- I'm about to</p> <p>13 go into another section so now might be a good time for a</p> <p>14 break. If you want to keep going, I'm happy to keep</p> <p>15 going, but it's been a little over an hour now.</p> <p>16 MS. AGRAWAL: Let's break.</p> <p>17 THE VIDEOGRAPHER: This is the end of Disk</p> <p>18 Number 1, Volume 1. We are off the record at 10:46 a.m.</p> <p>19 (Recess.)</p> <p>20 THE VIDEOGRAPHER: This is the beginning of</p> <p>21 Disk Number 2, Volume 1. We are back on the record at</p> <p>22 11:00 a.m.</p> <p>23 You may proceed.</p> <p>24 Q. BY MR. KAMBER: Dr. Kessler, with respect to</p> <p>25 your testimony about reviewing the bytecodes.hpp file, do</p> <p style="text-align: right;">Page 50</p>	<p>1 We understand that -- I understand that</p> <p>2 bytecodes.hpp has been produced, but it seems that none</p> <p>3 of these other files that the witness is referring to</p> <p>4 have been given to us yet today.</p> <p>5 MS. AGRAWAL: You haven't asked the witness</p> <p>6 whether they refreshed his recollection.</p> <p>7 MR. KAMBER: I'm not sure that that is</p> <p>8 actually the limitation in the order, but we can check</p> <p>9 that.</p> <p>10 MS. AGRAWAL: Why don't we discuss it</p> <p>11 offline.</p> <p>12 MR. KAMBER: Sure.</p> <p>13 Q. Okay. Dr. Kessler, is it Oracle's position</p> <p>14 that the JDK 1.2 practices the asserted claims of the</p> <p>15 '205 patent?</p> <p>16 MS. AGRAWAL: Objection. Form. And</p> <p>17 objection. Privilege, caution the witness.</p> <p>18 THE WITNESS: So I can't interpret the claims</p> <p>19 of the '205. I can read source code to you.</p> <p>20 Q. BY MR. KAMBER: Okay. So you -- Oracle</p> <p>21 doesn't take any position as to whether or not JDK 1.2</p> <p>22 practices the asserted claims of the '205 patent;</p> <p>23 correct?</p> <p>24 MS. AGRAWAL: Same objections.</p> <p>25 THE WITNESS: So I believe that Oracle's</p> <p style="text-align: right;">Page 52</p>
<p>1 you remember that before?</p> <p>2 A. Yes.</p> <p>3 Q. You said that you also spent some time</p> <p>4 looking at other source code files specifically to</p> <p>5 prepare for your deposition here today; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And what source code files was that?</p> <p>8 MS. AGRAWAL: Objection to the extent that</p> <p>9 calls for attorney-client communications. I instruct the</p> <p>10 witness not to reveal protected conversations.</p> <p>11 And, Matthias, can we have an agreement so</p> <p>12 that I can shorthand my objections so they don't take</p> <p>13 forever? Can I just say, "Objection. Privileged.</p> <p>14 Caution the witness," and we understand that that's the</p> <p>15 shorthand for my objection?</p> <p>16 MR. KAMBER: That would be fine with me.</p> <p>17 MS. AGRAWAL: Great.</p> <p>18 THE WITNESS: Okay. I think my testimony was</p> <p>19 that I did look at other source code, but that I don't</p> <p>20 remember specific files, and, in fact, I don't remember</p> <p>21 specific files.</p> <p>22 MR. KAMBER: Okay. We would ask that you</p> <p>23 produce those files in accordance with the Judge's order</p> <p>24 about producing files that the document -- that the</p> <p>25 witnesses review in preparation for the deposition.</p> <p style="text-align: right;">Page 51</p>	<p>1 position is that the JDK does practice the '205.</p> <p>2 Q. BY MR. KAMBER: What is the basis for that</p> <p>3 belief?</p> <p>4 MS. AGRAWAL: Same objection.</p> <p>5 THE WITNESS: Communication with the</p> <p>6 attorneys.</p> <p>7 Q. BY MR. KAMBER: Do you have any other basis</p> <p>8 for the belief that JDK 1.2 practices the asserted claims</p> <p>9 of the '205 patent?</p> <p>10 MS. AGRAWAL: Same objections.</p> <p>11 THE WITNESS: My understanding of the '205</p> <p>12 comes from my communications with the attorneys. And</p> <p>13 using that information, I can look in the source code.</p> <p>14 Q. BY MR. KAMBER: I'm not sure I understand</p> <p>15 that answer, Dr. Kessler.</p> <p>16 My question is: Do you have any other basis</p> <p>17 besides conversations with counsel to believe that JDK</p> <p>18 1.2 practices the asserted claims of the '205 patent?</p> <p>19 MS. AGRAWAL: Same objections.</p> <p>20 THE WITNESS: In addition to information that</p> <p>21 I've obtained from the attorneys, I have my reading of</p> <p>22 the code.</p> <p>23 Q. BY MR. KAMBER: Which code?</p> <p>24 MS. AGRAWAL: Same objections.</p> <p>25 THE WITNESS: In the case of the '205, I</p> <p style="text-align: right;">Page 53</p>

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<p>1 potential implementation of the asserted claims of the</p> <p>2 '205 patent; is that correct?</p> <p>3 MS. AGRAWAL: Objection.</p> <p>4 THE WITNESS: I don't -- I don't recall</p> <p>5 whether it was me or John.</p> <p>6 Q. BY MR. KAMBER: Is it Oracle's position that</p> <p>7 the fast_invokevfinal method implements all of the</p> <p>8 remaining asserted claims of the '205 patent?</p> <p>9 MS. AGRAWAL: Objection. Privilege.</p> <p>10 Objection. Form, caution the witness.</p> <p>11 THE WITNESS: All of the remaining -- I don't</p> <p>12 understand the question around all the remaining claims.</p> <p>13 Q. BY MR. KAMBER: Okay. Fair enough.</p> <p>14 I'll represent to you that Oracle's counsel</p> <p>15 at this point asserts Claims 1, 2, 3 and 8 of the '205</p> <p>16 patent. Is it Oracle's position that the</p> <p>17 fast_invokevfinal method implements each one of those</p> <p>18 claims?</p> <p>19 MS. AGRAWAL: Same objections.</p> <p>20 THE WITNESS: So I'm an engineer, not a</p> <p>21 lawyer. I can't interpret the claims of the patent.</p> <p>22 Q. BY MR. KAMBER: I understand. I'm not asking</p> <p>23 for your personal testimony here. I'm asking for</p> <p>24 Oracle's position.</p> <p>25 MS. AGRAWAL: Same objection.</p> <p style="text-align: right;">Page 58</p>	<p>1 So is it Oracle's position that all of Claims</p> <p>2 1 -- well, let me rephrase.</p> <p>3 Does Oracle take a position as to whether the</p> <p>4 fast_invokevfinal method implements Claim 1?</p> <p>5 MS. AGRAWAL: Same objections. I'll also</p> <p>6 object to the extent it calls for expert testimony.</p> <p>7 THE WITNESS: So I can't answer that</p> <p>8 question without revealing what Oracle's attorneys</p> <p>9 interpret Claim 1 to be.</p> <p>10 Q. BY MR. KAMBER: Okay. But I'm not asking you</p> <p>11 to reveal anything. I'm just asking you to tell me</p> <p>12 Oracle's position so that our client can understand it.</p> <p>13 Is it Oracle's position that the</p> <p>14 fast_invokevfinal method implements Claim 1 of the '205</p> <p>15 patent?</p> <p>16 MS. AGRAWAL: Same objections. Objection to</p> <p>17 the extent it calls for a legal conclusion, expert</p> <p>18 testimony.</p> <p>19 THE WITNESS: And, again, I do not know how</p> <p>20 to answer your question without revealing attorney-client</p> <p>21 privileged information.</p> <p>22 Q. BY MR. KAMBER: Is it Oracle's position that</p> <p>23 the only person who can answer that question is an expert</p> <p>24 witness?</p> <p>25 MS. AGRAWAL: Same objection.</p> <p style="text-align: right;">Page 60</p>
<p>1 THE WITNESS: So without reviewing the</p> <p>2 patent, which I can't do without consulting with my</p> <p>3 attorneys, I don't know how to answer the question.</p> <p>4 Q. BY MR. KAMBER: So it's Oracle's position</p> <p>5 that it doesn't know whether all of Claims 1, 2, 3 and 8</p> <p>6 implement the -- excuse me. So it's Oracle's position</p> <p>7 that fast invoke -- let me start over.</p> <p>8 Is it Oracle's position that the</p> <p>9 fast_invokevfinal method -- I'm struggling to get this</p> <p>10 one out, so bear --</p> <p>11 A. Take your time.</p> <p>12 Q. -- bear with me, Dr. Kessler.</p> <p>13 Does Oracle take no position as to whether</p> <p>14 all of Claims 1, 2, 3 and 8 are practiced by the</p> <p>15 fast_invokevfinal method?</p> <p>16 MS. AGRAWAL: Objection. Privilege, caution</p> <p>17 the witness.</p> <p>18 THE WITNESS: I can't answer that question</p> <p>19 without interpreting the claims of the patent.</p> <p>20 Q. BY MR. KAMBER: Would it help to look at the</p> <p>21 claims themselves?</p> <p>22 A. No, because I am not an attorney.</p> <p>23 Q. Okay. I understand that you would have to do</p> <p>24 an interpretation, but, again, I'm asking for Oracle's</p> <p>25 position here today, not your interpretation.</p> <p style="text-align: right;">Page 59</p>	<p>1 Mr. Kamber, can we just take a quick break?</p> <p>2 MR. KAMBER: Sure.</p> <p>3 THE VIDEOGRAPHER: We're off the record at</p> <p>4 11:15 a.m.</p> <p>5 (Discussion off the record.)</p> <p>6 THE VIDEOGRAPHER: We are back on record at</p> <p>7 11:23 a.m.</p> <p>8 You may proceed.</p> <p>9 Q. BY MR. KAMBER: Dr. Kessler, have you had an</p> <p>10 opportunity to confer with your counsel?</p> <p>11 A. Yes.</p> <p>12 Q. Let me go back to some questions from before.</p> <p>13 Is it Oracle's position that the fast_invokevfinal method</p> <p>14 implements Claim 1 of the '205 patent?</p> <p>15 MS. AGRAWAL: Mr. Kamber, if you have the</p> <p>16 interrogatory response, that will help to refresh --</p> <p>17 that will probably -- I'm just trying to help you help</p> <p>18 Dr. Kessler refresh his recollection. He's not here to</p> <p>19 testify as an expert or as an attorney, so if you want to</p> <p>20 just move this along.</p> <p>21 MR. KAMBER: Sure. Let me just ask a</p> <p>22 question.</p> <p>23 Q. Dr. Kessler, are you unable to answer my</p> <p>24 question unless and until you see Oracle's rog response?</p> <p>25 MS. AGRAWAL: Objection. Form.</p> <p style="text-align: right;">Page 61</p>

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<p>1 of these several places that you found them?</p> <p>2 A. Class names have to be resolved, method names</p> <p>3 have to be resolved, field names have to be resolved.</p> <p>4 And there may be others.</p> <p>5 Q. Is class name resolution a -- in Java, a use</p> <p>6 of the invention allegedly set forth in the asserted</p> <p>7 claims of the '104 patent?</p> <p>8 MS. AGRAWAL: Objection. Form.</p> <p>9 THE WITNESS: My understanding of the '104 is</p> <p>10 that it refers to the -- not the resolution of the</p> <p>11 symbolic reference, but the saving of the numeric</p> <p>12 reference to avoid the re-resolution of a symbolic</p> <p>13 reference.</p> <p>14 Q. BY MR. KAMBER: Let me try to rephrase it,</p> <p>15 then.</p> <p>16 Is it Oracle's position that the saving of</p> <p>17 resolved -- let me stop for a second. I'm trying to</p> <p>18 figure out how to refer to it. Is it resolved reference?</p> <p>19 How would you characterize it?</p> <p>20 MS. AGRAWAL: Objection. Form.</p> <p>21 THE WITNESS: You could -- so the resolved</p> <p>22 reference is the thing -- so a resolved reference is the</p> <p>23 result of calling resolve -- calling a resolution method,</p> <p>24 and a numeric reference is a particular encoding of that</p> <p>25 result.</p> <p style="text-align: right;">Page 186</p>	<p>1 MS. AGRAWAL: Objection. Calls for a legal</p> <p>2 conclusion, calls for expert testimony, and actually, I</p> <p>3 do think that's beyond the scope because you're asking</p> <p>4 him to interpret the '104 patent. And Topic 11 is asking</p> <p>5 for a conception reduction to practice and actual use,</p> <p>6 and you're asking questions in the abstract, and you're</p> <p>7 asking for Dr. Kessler's interpretation of the '104</p> <p>8 patent.</p> <p>9 MR. KAMBER: Dr. Kessler testified that one</p> <p>10 place he found this was in the resolution of class names</p> <p>11 in Java. I'm asking him that -- about that actual use.</p> <p>12 MS. AGRAWAL: Okay.</p> <p>13 Q. BY MR. KAMBER: So that's exactly what I'm</p> <p>14 trying to get at is: What is it in class names that</p> <p>15 actually uses the invention alleged set forth in the</p> <p>16 asserted claims of the '104 patent?</p> <p>17 MS. AGRAWAL: Objection. Form.</p> <p>18 THE WITNESS: Class names arrive as symbolic</p> <p>19 references, and in order to be used, have to be reduced</p> <p>20 to numeric -- not -- they don't have to be. One way to</p> <p>21 use them is to reduce them to numeric references, and</p> <p>22 then one can save the numeric references to avoid the</p> <p>23 resolution on subsequent use of that class name.</p> <p>24 Q. BY MR. KAMBER: Would it be fair to say that</p> <p>25 one reason to do that is because resolution requires some</p> <p style="text-align: right;">Page 188</p>
<p>1 MS. AGRAWAL: And just for the record -- we</p> <p>2 talked about this so many times -- you're not asking</p> <p>3 Dr. Kessler to draw legal conclusions or give expert</p> <p>4 testimony based on the '104 patent; correct?</p> <p>5 MR. KAMBER: No, I'm just asking questions in</p> <p>6 line with Deposition Topic Number 11 about Oracle's</p> <p>7 position regarding the evidence of actual use of the</p> <p>8 inventions allegedly encompassed by the asserted claims</p> <p>9 of the '205 -- or of the '104 patent. Excuse me.</p> <p>10 MS. AGRAWAL: I'm just going to assert a</p> <p>11 general objection of calling for a legal conclusion and</p> <p>12 asking for expert testimony.</p> <p>13 MR. KAMBER: Again, I dispute that and would</p> <p>14 note that that objection was not registered with respect</p> <p>15 to Deposition Topic Number 11 in the response to the</p> <p>16 deposition notice, unlike with Deposition Topic Number</p> <p>17 10.</p> <p>18 MS. AGRAWAL: It's not the topic that I'm</p> <p>19 objecting to; it's your questions.</p> <p>20 Q. BY MR. KAMBER: So Dr. Kessler, let me try</p> <p>21 this again: Is the -- is it Oracle's position that the</p> <p>22 resolution of symbolic references to numeric references</p> <p>23 and subsequent saving of the numeric reference in the</p> <p>24 case of class names practices the inventions allegedly</p> <p>25 set forth in the asserted claims of the '104 patent?</p> <p style="text-align: right;">Page 187</p>	<p>1 degree of work that is sought to be avoided by saving the</p> <p>2 numeric reference for future use?</p> <p>3 MS. AGRAWAL: Objection. Form.</p> <p>4 THE WITNESS: Yeah, are you suggesting that</p> <p>5 that's why it's done?</p> <p>6 Q. BY MR. KAMBER: I'm asking if that's one</p> <p>7 benefit.</p> <p>8 MS. AGRAWAL: Same objection.</p> <p>9 THE WITNESS: Okay. So restate the question.</p> <p>10 Q. BY MR. KAMBER: Sure. Is -- is the fact that</p> <p>11 you can avoid resolution later on -- re-resolution one of</p> <p>12 the benefits of using the already resolved numeric</p> <p>13 reference?</p> <p>14 MS. AGRAWAL: Objection. Form.</p> <p>15 THE WITNESS: That's my understanding of one</p> <p>16 of the benefits of the '104 patent.</p> <p>17 Q. BY MR. KAMBER: Do you understand -- well,</p> <p>18 what's your understanding as to any other benefits?</p> <p>19 MS. AGRAWAL: Objection. Form. And object</p> <p>20 to the extent it calls for expert testimony or a legal</p> <p>21 conclusion.</p> <p>22 THE WITNESS: Yeah, I'm not going to</p> <p>23 speculate on all of the reasons that the '104 patent</p> <p>24 exists.</p> <p>25 Q. BY MR. KAMBER: Okay. You mentioned method</p> <p style="text-align: right;">Page 189</p>

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<p>1 that's not the complete list and that I don't know what</p> <p>2 changes between class files for Java SE and the other</p> <p>3 instrumentalities, the functionality -- my understanding</p> <p>4 is that the functionality is the same, even if the file</p> <p>5 names or the method names are different.</p> <p>6 Q. BY MR. KAMBER: And you also just said that</p> <p>7 my list of class names, method names, and field names is</p> <p>8 not a complete list; correct?</p> <p>9 A. Yes, I did say that.</p> <p>10 Q. Okay. Can you please give me a complete</p> <p>11 list.</p> <p>12 MS. AGRAWAL: Objection. Form.</p> <p>13 THE WITNESS: I'm almost sure that there is</p> <p>14 at least one more place where symbolic references are</p> <p>15 resolved. I cannot think of it right now.</p> <p>16 Q. BY MR. KAMBER: But your recollection here</p> <p>17 today is there is only one more potential place where</p> <p>18 there is symbolic resolution to numeric resolution with a</p> <p>19 numeric resolution, numeric reference is then saved; is</p> <p>20 that correct?</p> <p>21 MS. AGRAWAL: Objection. Form.</p> <p>22 THE WITNESS: No, my testimony is that</p> <p>23 there's at least one.</p> <p>24 Q. BY MR. KAMBER: But you can't identify it for</p> <p>25 me today?</p> <p style="text-align: right;">Page 202</p>	<p>1 I declare under the penalty of perjury</p> <p>2 under the laws of the State of California that the</p> <p>3 foregoing is true and correct.</p> <p>4 Executed on _____, 2011,</p> <p>5 at _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 SIGNATURE OF THE WITNESS</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 204</p>
<p>1 A. No.</p> <p>2 MR. KAMBER: I don't have any further</p> <p>3 questions of the witness on these topics. I would note</p> <p>4 that we do want to keep the deposition open on Topic 11</p> <p>5 as to -- subject to our discussion regarding the '520 and</p> <p>6 '720 patents, and we can still discuss that going</p> <p>7 forward. But other than that, I have no further</p> <p>8 questions for you today.</p> <p>9 MS. AGRAWAL: Thank you.</p> <p>10 THE VIDEOGRAPHER: This is the end of today's</p> <p>11 deposition. We are off the record at 5:10 p.m. The</p> <p>12 master tapes will be held by Veritext.</p> <p>13 (TIME NOTED: 5:10 p.m.)</p> <p>14 ---oOo---</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 203</p>	<p>1 STATE OF CALIFORNIA) ss:</p> <p>2 COUNTY OF MARIN)</p> <p>3</p> <p>4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby</p> <p>5 certify:</p> <p>6 That the foregoing deposition testimony was</p> <p>7 taken before me at the time and place therein set forth</p> <p>8 and at which time the witness was administered the oath;</p> <p>9 That testimony of the witness and all</p> <p>10 objections made by counsel at the time of the examination</p> <p>11 were recorded stenographically by me, and were thereafter</p> <p>12 transcribed under my direction and supervision, and that</p> <p>13 the foregoing pages contain a full, true and accurate</p> <p>14 record of all proceedings and testimony to the best of my</p> <p>15 skill and ability.</p> <p>16 I further certify that I am neither counsel</p> <p>17 for any party to said action, nor am I related to any</p> <p>18 party to said action, nor am I in any way interested in</p> <p>19 the outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 5th day of August, 2011.</p> <p>22</p> <p>23</p> <p>24 _____</p> <p>25 LESLIE ROCKWOOD, RPR, CSR NO. 3462</p> <p style="text-align: right;">Page 205</p>